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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JULIE BARFUSS, et al.,

Plaintiffs,

v.

LIVE NATION ENTERTAINMENT, INC., TICKETMASTER L.L.C., STADCO LA, LLC as DOE 1, and DOES 2 through 10, inclusive,

Defendants.

Case No. 2:23-cv-01114-GW-DTBx

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT

The Honorable George H. Wu

Hearing Date: May 15, 2025

Hearing Time: 8:30 a.m.

Courtroom: 9D, 9th Floor

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I. INTRODUCTION

Plaintiffs are 355 fans of Taylor Swift, "[a] global superstar" and "one of the most, if not the most, iconic artists in the world." Third Am. Compl., ECF No. 128 ("TAC") ¶ 372. Like "millions of [other] fans," *id.*, Plaintiffs attempted to buy tickets during the primary onsale to see Ms. Swift perform in The Eras Tour. But even in the largest stadiums in the country, there were simply "not...enough seats to meet the demand," and Plaintiffs allegedly did not secure tickets. *Id.* ¶ 383. Plaintiffs now allege that their failure to secure tickets to The Eras Tour, and their experience with The Eras Tour presale, was the product of a grab bag of contractual breaches, fraud, negligence, and violations of antitrust and unfair competition laws.

Plaintiffs' claims against Defendants Live Nation and Ticketmaster are nonsensical, contradict sources incorporated by reference in the TAC, and fail as a matter of law. Specifically, Plaintiffs: (1) fail to plausibly allege the existence of any contract that could have been breached, requiring dismissal of Claim One for Breach of Contract; (2) do not plead any alleged misrepresentation with particularity, requiring dismissal of Claim Two for Fraud and Claim Three for Negligent Misrepresentation; (3) fail to allege any legally cognizable duty of care that Defendants could have been negligent in discharging, requiring dismissal of Claim Four for Negligence; (4) do not even attempt to plead any market definition to support their antitrust claims, and fail to allege basic elements of their many nebulous antitrust theories, requiring dismissal of Claim Five for Antitrust Violations; and (5) fail to allege any unlawful, unfair, or fraudulent conduct, nor an inadequate remedy at law, requiring dismissal of Claim Six for UCL violations.

The TAC is Plaintiffs' fourth attempt to plead plausible claims since December 2022. Despite four tries over two years, the TAC remains fundamentally senseless and legally deficient. Dismissal with prejudice is warranted.

II. SUMMARY OF ALLEGATIONS

A. The Parties

Plaintiffs. Plaintiffs are 355 Taylor Swift fans from across the United States and Canada.[1] TAC ¶¶ 3, 8-363.

Defendants Ticketmaster and Live Nation. Ticketmaster is a ticketing company—it provides primary ticketing services to venues, helping them sell and service tickets to the events that they host. *Id.* ¶¶ 369-370. It also provides secondary ticketing services to ticket resellers for certain events, allowing them to connect with (and resell to) potential purchasers. *Id.* ¶ 371.

Live Nation is a concert promotion company—it works with artists to finance live events and tours, providing services and upfront funds to the artist in exchange for a portion of the revenue if the event turns a profit. *Id.* ¶ 369.

Ticketmaster and Live Nation merged in 2010. *Id.*

Other Defendants. Defendant StadCo LA, LLC allegedly operates SoFi Stadium, "one of the venues for [The Eras Tour]." *Id.* ¶ 366. Plaintiffs also allege that there are nine "Doe" Defendants who are "in some way responsible for the[ir] damages and injuries." *Id.* ¶¶ 367-368.

B. The Eras Tour Onsale

Taylor Swift recently concluded The Eras Tour, "her record-breaking, world-wide concert tour." *Id.* ¶ 372. In anticipation of huge demand, primary tickets

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[1] Defendants are concurrently moving to compel arbitration of the claims of five of these Plaintiffs—Clay Murray, Heather Slack, Eleana Villa, Elmer Bunger, and Virginia Spielman—who are bound to a valid agreement to arbitrate before JAMS. Whether the Court grants or denies that Motion, the claims of these Plaintiffs should be dismissed either for the reasons herein or for lack of Article III standing, as they did not even attempt to participate in The Eras Tour onsale in November 2022. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000) (Article III standing requires that the plaintiff has been injured by "the challenged action of the defendant"); Remand Order, *Ameri v. Ticketmaster LLC*, No. 18-cv-06750-VC (N.D. Cal. Apr. 1, 2019), ECF No. 42 (court lacked subject matter jurisdiction over claim of anticompetitive practices inflating resale ticket prices when plaintiff "never purchased any resale tickets,…and neither party has adequately shown that [plaintiff] was otherwise injured by the alleged practices.").

to The Eras Tour were initially sold through two presales[2] in 2022: (1) the Capital One presale, which was limited to Capital One cardholders, and (2) the TaylorSwiftTix presale. *Id.* ¶¶ 373, 380. To participate in the TaylorSwiftTix presale, a fan had to register with Ticketmaster's Verified Fan program—a fan sign-up and authentication process for certain presales, designed to verify that a given ticket purchaser is a real fan, not a bot or professional reseller. *See id.* ¶ 373.[3] Plaintiffs claim that, despite registering with Verified Fan, Ticketmaster denied them a "fair chance to get a ticket." *Id.* ¶ 399. For instance, Ticketmaster supposedly:

- Gave out too many (*id.* ¶¶ 379, 383) and also too few (*id.* ¶ 399) presale access codes;
- Encouraged people to use their phones to access the presale when computers would have been better (*id.* ¶ 411);
- Released an "insufficient [number of] ticket[s]" during the presales (*id.* ¶¶ 380, 385), yet also sold out of all tickets too quickly (*id.* ¶ 381); and
- Allowed "scalpers and bots" to buy and resell tickets instead of real fans (*id.* ¶ 384).

In addition, despite claiming to have been harmed by their inability to purchase The Eras Tour tickets (*id.* ¶¶ 397-399), Plaintiffs also allege that they were harmed when they *did* secure tickets. Specifically, Ticketmaster allegedly:

- Sent non-VIP tickets to buyers of VIP tickets (*id.* ¶ 387);
- Sold obstructed-view tickets to purchasers who did not realize what they were buying (*id.* ¶ 388);
- Sold ADA-compliant seats without verification of need (*id.* ¶ 392);

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[2] Both presales were part of the overall "onsale," an industry term of art that typically includes all manner of sales available to the public.

[3] Ticketmaster developed Verified Fan in response to the widespread practice of professional resellers purchasing tickets in the initial onsale (often through bots), only to turn around and resell those tickets at a premium. Verified Fan was employed to help distribute tickets more fairly by giving real fans who registered a chance at buying tickets.

- Provided "tickets at seat locations other than those for which Plaintiffs purchased their tickets" (*id.* ¶ 404); and
- Charged Plaintiffs "excessive service fees" (*id.* ¶ 394).

C. Plaintiffs' Claims

Plaintiffs allege six claims for relief against various groups of Defendants.

Claim One: Breach of Contract (Ticketmaster). Plaintiffs allege that Ticketmaster breached contracts both "during the presale" and "after ticket purchase." *Id.* ¶¶ 396-405. During the presale, Ticketmaster supposedly "agreed that, in exchange for Plaintiffs purchasing a significant amount of merchandise and/or in exchange for their purchase of the canceled 'Lover's Fest' tickets, Plaintiffs would be entitled to participate in the presale of 'The Eras' tour tickets," and Ticketmaster "breached [this] Contract by failing to actually provide the proper presale it promised." *Id.* ¶¶ 397, 399. Post-purchase, Ticketmaster allegedly agreed that "[i]n exchange for a stated price, a Plaintiff who completed a purchase online would receive tickets for that price," but "in breach of that contract," (1) "ticket prices increased during Plaintiffs' purchases," (2) Ticketmaster "[took] tickets away from certain Plaintiffs," and (3) Ticketmaster "provid[ed] tickets at seat locations other than those for which Plaintiffs purchased their tickets." *Id.* ¶¶ 401, 404.

Claim Two: Fraud (All Defendants). Plaintiffs allege that Defendants misrepresented "how to and who could get 'codes' and/or otherwise establish themselves as 'verified' fans, how best to get tickets, and who could participate in the presale." *Id.* ¶ 407; *see generally id.* ¶¶ 406-418.

Claim Three: Negligent Misrepresentation (All Defendants). Plaintiffs allege that the same "misrepresentations" that form the basis of Claim Two also constitute negligent misrepresentation. *Id.* ¶¶ 419-422.

Claim Four: Negligence (Ticketmaster and Live Nation). Plaintiffs allege that Ticketmaster and Live Nation breached a "duty of reasonable care to allow [Plaintiffs] to use the [ticket sales] platform for the purpose for which [Ticketmaster]

provides it, and for the platform to function properly and not cause unreasonable delay, fail to process user input accurately (or at all) or 'crash' altogether." *Id.* ¶ 425; *see generally id.* ¶¶ 423-428.

Claim Five: Antitrust Violations (All Defendants). Plaintiffs lump together six distinct antitrust theories into a single claim for "Antitrust Violations" under California's Cartwright Act. *Id.* ¶¶ 429-484. They use the phrases "Primary Ticket Market" and "Secondary Ticket Market," but never attempt to define such markets. Plaintiffs allege the following specific theories:

- ***Unlawful Tying***, under two theories: (1) "tying the sale of Taylor Swift tickets sold in the Primary Market to Ticketmaster's Secondary Ticket Exchange services for the resale of Taylor Swift tickets" (*id.* ¶ 436); and (2) tying the purchase of Taylor Swift merchandise and/or prior tour tickets to obtaining Verified Fan status (*id.* ¶ 438);
- ***Exclusive Dealings***, alleging unspecified exclusive arrangements between Ticketmaster, venues, artists, and ticket buyers (*id.* ¶¶ 444-452);
- ***Price Discrimination***, alleging that "Ticketmaster's conduct in changing pricing during sales on its Primary Ticket Platform and manipulation of its Secondary Ticket Market for Taylor Swift tickets constitutes price discrimination in violation of [California Business & Professions Code] § 17031," because seats with "the same view of the musician, at the same venue, and with the same amount of VIP benefits...should sell at a similar price" (*id.* ¶¶ 454-455);
- ***Price Fixing***, alleging that "Ticketmaster's conduct of allying with scalpers and venues such as SoFi Stadium has amounted to price fixing," yet failing to specify any agreement (*id.* ¶¶ 463);
- ***Group Boycotting***, alleging that Ticketmaster agreed "with competitors like SeatGeek…to refuse to conduct business with any competitor that

does not conform to Ticketmaster's demands," yet failing to specify any such "demands" (*id.* ¶ 472); and

- ***Market Division Scheme***, alleging that Ticketmaster "specifically carved out small territories to give to competitors like SeatGeek in an attempt to hide the level of monopolistic power and control Ticketmaster has" (*id.* ¶ 479).

Claim Six: UCL Violations (All Defendants). Plaintiffs assert violations of California's Unfair Competition Law because Ticketmaster allegedly "make[s] it difficult for ticket holders to sell their tickets on competitive Secondary Ticket Exchanges," "delay[s] the delivery" of primary tickets, issues "paperless tickets" that can be resold "only...through Ticketmaster's Secondary Ticket Exchange," and threatened StubHub with a tortious interference claim. *Id.* ¶¶ 485-496.

Plaintiffs seek actual damages, punitive damages, treble damages, injunctive relief, restitution, and attorneys' fees. *Id.* at 48-49.

III. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). A court need not accept "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

IV. ARGUMENT

Plaintiffs' "scattershot approach to pleading makes it extremely difficult, if not impossible, to discern the precise nature of [their] claims, much less the facts and legal authority which [they] allege[] support those claims." *Spain v. EMC Mortg. Co.*, 2008 WL 752610, at *3 (D. Ariz. Mar. 18, 2008). Nonetheless, wading through Plaintiffs' vague and often senseless allegations, each of Plaintiffs' claims suffers from one or more fatal legal defects.

A. Plaintiffs Fail to Plausibly Allege Breach of Contract

To state a plausible claim for breach of contract, Plaintiffs must allege: (1) a contract; (2) Plaintiffs' performance or excuse for non-performance; (3) Ticketmaster's breach; and (4) resulting damages to Plaintiffs. *Walsh v. W. Valley Mission Cmty. Coll. Dist.*, 66 Cal. App. 4th 1532, 1545 (1998). Plaintiffs fail out of the gate because they do not plead any contract with the requisite specificity. And even if the Court construed the contract as the terms governing the Verified Fan program, Plaintiffs do not plausibly allege any breach.

1. Plaintiffs' Claim for Breach "During the Presale" Fails

Plaintiffs allege two breach of contract theories: one "during the presale" and another "after ticket purchase." TAC ¶¶ 396-405. In the first theory, Plaintiffs claim that they "entered into a contract with Ticketmaster on November 15, 2022," pursuant to which "Ticketmaster agreed that, in exchange for Plaintiffs purchasing a significant amount of merchandise and/or in exchange for their purchase of the canceled 'Lover's Fest' tickets, Plaintiffs would be entitled to participate in the presale of 'The Eras' tour tickets."[4] *Id.* ¶ 397. Ticketmaster supposedly breached this contract "by failing to actually provide the proper presale it promised," *e.g.*, it failed to: "exclude those without codes," "give out codes to those who qualified," and "give those with codes the fair chance to get a ticket." *Id.* ¶ 399.

A plaintiff's failure to attach the contract to the complaint or to plead its essential terms with adequate particularity is grounds for dismissal. *See, e.g.*, *Sumotext Corp. v. Zoove*, *Inc.*, 2016 WL 6524409, at *2 (N.D. Cal. Nov. 3, 2016). Here, Plaintiffs do neither. What exactly did Ticketmaster promise? To permit Plaintiffs "to participate in the presale"? If so, then there is no breach; Plaintiffs

[4] It is unclear how Plaintiffs could have entered a contract *in November 2022* in which they agreed to purchase tickets to "Taylor Swift's prior tour, 'Lover Fest,' which was canceled due to COVID-19"—*i.e.*, *in 2021*. *Id.* ¶ 438. *See Patriot Sci. Corp. v. Korodi*, 504 F. Supp. 2d 952, 960 (S.D. Cal. 2007) ("[P]ast consideration cannot support a contract." (citation omitted)).

never allege that they couldn't *participate* in the presale, only that they didn't secure tickets or didn't experience a "proper presale." TAC ¶ 399. And if the promise was instead to "provide a proper presale," when and how did Ticketmaster make that promise, and what constitutes a "proper presale" anyway? Plaintiffs never say.

If the Court construes Plaintiffs' claim as one for breach of the terms governing the Verified Fan sign-up program, it still fails. The Verified Fan terms—which Plaintiffs incorporate by reference (*id.* ¶ 438)—do *not* promise that Ticketmaster will "exclude those without codes" or "give out codes to those who qualified." *Id.* ¶ 399. To the contrary, those terms confirm that "*access codes are never guaranteed*." Decl. of T. O'Mara in Supp. of Mot. to Dismiss ("O'Mara Decl."), Ex. 1 (emphasis added).[5] Nor do the terms promise a "fair chance" (TAC ¶ 399) for everyone with a code to get a ticket to a tour with unprecedented demand.

2. Plaintiffs' Claim for Breach "After Ticket Purchase" Fails

Plaintiffs' claim for breach of contract "after ticket purchase" fares no better. According to Plaintiffs, Ticketmaster promised that, "[i]n exchange for a stated price, a Plaintiff who completed a purchase online would receive tickets for that price," but (1) "ticket prices increased during Plaintiffs' purchases," (2) Ticketmaster "[took] tickets away from certain Plaintiffs," and (3) Ticketmaster "provid[ed] tickets at seat locations other than those for which Plaintiffs purchased their tickets." *Id.* ¶¶ 401, 404.

To start, this second contract theory is inconsistent with the first. In their "during the presale" claim, Plaintiffs suggest that all 355 Plaintiffs were harmed because they did *not* secure tickets during the presale. *Id.* ¶¶ 397-399. Yet in their "after ticket purchase" claim, all 355 Plaintiffs also claim they *did* secure tickets—just not on the terms they were supposedly promised. This alone warrants dismissal.

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[5] Because the Verified Fan terms are incorporated by reference, the Court may consider them. *See U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) ("[W]ritten instruments…may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or [it] forms the basis of the plaintiff's claim.").

See Hernandez v. Select Portfolio, 2015 WL 3914741, at *10 (C.D. Cal. June 25, 2015) ("Contradictory allegations...are inherently implausible.").

In any event, Plaintiffs again fail to plead any contract or breach with adequate specificity. When and how did Ticketmaster promise that ticket prices would remain unchanged "during Plaintiffs' purchases," whatever time period that means? Who did Ticketmaster "take tickets away from" and when? Who obtained a seat other than the seat they believe they paid for? Plaintiffs' allegations fail to provide basic notice of the nature of their claim.

B. Plaintiffs Fail to Plausibly Allege Fraud or Negligent Misrepresentation

Plaintiffs' claims for fraud and negligent misrepresentation (which sounds in fraud) must be pled with particularity under Rule 9(b). *Avakian v. Wells Fargo Bank, N.A.*, 827 F. App'x 765, 766 (9th Cir. 2020) (because "negligent misrepresentation" is a "fraud-based claim[]," it "must meet the heightened pleading requirements of Rule 9(b)"); *Puri v. Khalsa*, 674 F. App'x 679, 689 (9th Cir. 2017) (same); *Cambridge Lane, LLC v. J-M Mfg. Co., Inc.*, 2020 WL 8410437, at *7 (C.D. Cal. May 14, 2020) (Wu, J.) (If "specific allegations of fraud are made," then "heightened pleading" is "required for a negligent misrepresentation claim."). This means Plaintiffs must plead the "who, what, when, where, and how" of the alleged misrepresentations. *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124-25 (9th Cir. 2009); *Evans v. Bekins Moving Sols.*, 2024 WL 4404971, at *4 (C.D. Cal. Aug. 12, 2024) (plaintiffs failed to "plead...negligent representation with the particularity required by Rule 9(b)."). Plaintiffs do not meet this pleading standard.

Plaintiffs' overarching theory of fraud is that Defendants made false promises about "how to and who could get 'codes' and/or otherwise establish themselves as 'verified' fans, how best to get tickets, and who could participate in the presale." TAC ¶ 407. But Plaintiffs' subsequent laundry list of "representations" does not plead who said what to whom, when, where, and how. For instance:

- Ticketmaster supposedly "made it appear as if only those with codes would be able to join the presale" (*id.* ¶ 408), but what did Ticketmaster actually say? When? Who relied on it and how?
- Ticketmaster supposedly "made out that spending enough would get a buyer a code" (*id.* ¶ 409), and that "purchases for [the prior Lover Fest tour] would advantage [fans] in acquiring tickets for The Eras [T]our." *Id.* ¶ 412. These assertions lack a who, when, where, and how, but they also directly contradict the Verified Fan terms incorporated in the TAC, which provide that "a purchase or payment of any kind *will not increase your chances* of getting an access code." O'Mara Decl. Ex. 1 (emphasis added).
- Ticketmaster supposedly "advised using a laptop or desktop computer" to participate in the onsale (*id.* ¶ 411), but Plaintiffs never say when or how this "misrepresentation" was made and to whom, or why anyone found it material.
- Ticketmaster supposedly "caused prospective purchasers to believe that participating in [the Capital One presale] would increase their chance of getting tickets" (*id.* ¶ 413), but Plaintiffs do not allege any statements that Ticketmaster made in connection with that program at all.

Plaintiffs' fraud and negligent misrepresentation claims thus fail. *See In re Future Motion, Inc. Prods. Liab. Litig.*, 2024 WL 3408224, at *6 (N.D. Cal. July 12, 2024) ("This scattershot approach to pleading is not adequate to give Defendant notice of the 'who, what, where, when, and why' of the misconduct alleged such that Defendant can defend against the charge.").

C. Plaintiffs Fail to Plausibly Allege Negligence

Plaintiffs next allege that Ticketmaster was negligent in maintaining its platform because it failed "to protect [the platform] from bot attacks and other unauthorized uses" and allowed third parties to run software that impeded its

functioning. TAC ¶¶ 425-427. To establish negligence, Plaintiffs must plausibly allege: (1) a legal duty of care owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation linking the breach to the plaintiff's injury, and (4) actual damages. *Ladd v. County of San Mateo*, 12 Cal. 4th 913, 917 (1996). A legal duty of care "means the duty to use ordinary care in activities from which harm to the plaintiff might reasonably be anticipated." *Pirozzi v. Apple Inc.*, 913 F. Supp. 2d 840, 851 (N.D. Cal. 2012).

Plaintiffs fail at the first element. They contend that Ticketmaster's "claim to provide superior service" somehow creates "a duty of reasonable care to allow [buyers] to use the platform for the purpose for which Ticketmaster provides it, and for the platform to function properly and not cause unreasonable delay, fail to process user input accurately (or at all) or 'crash' altogether." TAC ¶ 425. But as a matter of law, Ticketmaster does not owe any legal duty to Plaintiffs to ensure that a high-demand onsale like The Eras Tour (or any onsale) will be free from a third party's illicit attempt to attack the platform, or to ensure that third parties properly run their software on the platform. *See Pirozzi*, 913 F. Supp. 2d at 852 ("Plaintiffs have not yet adequately pled or identified a legal duty on the part of Apple to protect users' personal information from third-party app developers."); *Tarasoff v. Regents of Univ. of Calif.*, 17 Cal.3d 425, 435 (1976) (A defendant "generally owes no duty to protect another from the conduct of third-parties.").[6] And if claiming to offer

[6] Indeed, the Terms of Use to which every ticket purchaser agrees provide that Ticketmaster (1) "PROVIDES THE SITE…'AS IS' AND 'AS AVAILABLE,'" (2) "DOES NOT GUARANTEE THAT THE SITE…WILL ALWAYS FUNCTION WITHOUT DISRUPTIONS, DELAYS, OR IMPERFECTIONS," and (3) "[IS] NOT RESPONSIBLE FOR THE ACTIONS OR INFORMATION OF THIRD PARTIES." O'Mara Decl. Ex. 2. These Terms of Use are incorporated by reference in the TAC. *See* TAC ¶ 389 (referring to Defendants' "waiver" to which Plaintiffs were required to agree).

In addition, the Terms of Use make clear that Defendants "WILL HAVE NO LIABILITY OR RESPONSIBILITY WHATSOEVER FOR…DAMAGE…RESULTING FROM YOUR ACCESS TO AND USE OF OUR SITE,…ANY…DEFECTS, [OR] ANY ERRORS, MISTAKES, INACCURACIES, OR OMISSIONS IN ANY CONTENT." O'Mara Decl. Ex. 2. Plaintiffs' negligence and breach of contract claims are barred by this limitation of

"superior service" was enough to create such a duty, then every platform would be liable for negligence every time a user was unsatisfied. Plaintiffs' negligence claim should be dismissed.

D. Plaintiffs Fail to Plausibly Allege Any Antitrust Violation[7]

Plaintiffs next attempt to plead a series of distinct antitrust theories under a single claim for "Antitrust Violations." All of these theories fail because Plaintiffs do not even purport to define any relevant antitrust market. And each theory also fails because it does not plead essential elements of the relevant antitrust claim.

1. Plaintiffs Fail to Plausibly Allege Any Well-Defined Market or Monopoly Power Within That Market

All of Plaintiffs' antitrust claims fail for the threshold reason that they do not even attempt to define relevant antitrust markets. A relevant antitrust market is "the area of effective competition...within which significant substitution in consumption or production occurs." *Ohio v. Am. Express Co.*, 585 U.S. 529, 543 (2018) (citation omitted). "A threshold step in any antitrust case is to accurately define the relevant market," *FTC v. Qualcomm Inc.*, 969 F.3d 974, 992 (9th Cir. 2020), because "[w]ithout a definition of [the] market there is no way to measure [the defendant's] ability to lessen or destroy competition," *Am. Express*, 585 U.S. at 543 (citation omitted).[8] Failure to plead a plausible market is grounds for dismissal. *See Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1120-21 (9th Cir. 2018).

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liability, which Defendants reserve all rights to enforce. *See Food Safety Net Servs. v. Eco Safe Sys. USA, Inc.*, 209 Cal. App. 4th 1118, 1126 (2012).

[7] This section relies on case law interpreting both the Cartwright Act and the Sherman Act because "[t]he Cartwright Act is patterned after the Sherman Act, and 'federal cases interpreting the Sherman Act are applicable to problems arising under the Cartwright Act.'" *Nova Designs, Inc. v. Scuba Retailers Ass'n*, 202 F.3d 1088, 1092 (9th Cir. 2000) (citation omitted).

[8] Certain claims, such as horizontal price-fixing, are so "manifestly anticompetitive" that courts need not analyze the restraint with reference to a relevant market—but Plaintiffs here have not plausibly alleged any such *per se* unlawful restraint. *See Leegin Creative Leather Prod., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886 (2007).

The entirety of Plaintiffs' market definition consists of the legal conclusion that there is a "market for either initial or secondary ticket sales (referred to herein, respectively, as the 'Primary Ticket Market' and the 'Secondary Ticket Market,' and the services in those markets as 'Primary Ticket Services' and 'Secondary Ticket Services,' respectively)." TAC ¶ 2. That is wildly insufficient to plead an antitrust market. Who are the customers in each market—venues? Artists? Fans? Are any of the markets limited to Taylor Swift tickets or to "touring musician" tickets, as Plaintiffs sometimes suggest? *See id.* ¶ 434 (alleging "market power over the sale of *Taylor Swift and other touring musician tickets* in the Primary Ticket Market" (emphasis added)); *id.* ¶ 435 ("For those seeking to purchase primary *Taylor Swift tickets*, there is no other option but…Ticketmaster's Primary Ticket Platform." (emphasis added)).[9] Are the markets national or regional? Why are primary and secondary tickets not substitutes for one another? The TAC answers none of these questions, warranting dismissal. *See Singman v. NBA Prop., Inc.*, 2014 WL 7892049, at *3-4 (C.D. Cal. Jan. 17, 2014) (dismissing Sherman Act claim with prejudice for failure to "identify a plausible relevant market"), *aff'd*, 656 F. App'x 371 (9th Cir. 2016); *Ticketmaster L.L.C. v. RMG Techs., Inc.*, 536 F. Supp. 2d 1191, 1195-97 (C.D. Cal. 2008) (dismissing Sherman Act counterclaim based on "hopelessly muddled" alleged market, including because it "blur[red] the line between tickets and ticket distribution services"—just as Plaintiffs do here).

Likewise, Plaintiffs' allegations of monopoly power are conclusory and nonsensical. Plaintiffs state, with no support, that "Ticketmaster's share of the Primary Ticket Market" (whether this is a fan-facing ticket market or a venue-facing services market is unclear) is "between 70 and 80 percent," TAC ¶ 370, and also that Ticketmaster's share of "Primary and Secondary Ticket Markets" together is "between 70 and 80 percent," *id.* ¶ 446. Courts dismiss antitrust claims grounded in

[9] If Plaintiffs intend to plead any market limited to Taylor Swift tickets, it would be a single-brand market, which "courts have been extremely reluctant to embrace." *In re ATM Fee Antitrust Litig.*, 768 F. Supp. 2d 984, 997 (N.D. Cal. 2009).

baseless allegations of market share. *See FTC v. Facebook*, 560 F. Supp. 3d 1, 17-18 (D.D.C. 2021) (collecting cases and explaining that "bare" assertions of market share "in excess of 60%" are insufficient to plead market power).

2. Plaintiffs Fail to Plausibly Allege Any Unlawful Tie

Plaintiffs next allege two purported ties: (1) Ticketmaster tied "the sale of Taylor Swift tickets sold in the Primary Market to Ticketmaster's Secondary Ticket Exchange services for the resale of Taylor Swift tickets" (TAC ¶ 436), and (2) Ticketmaster tied Verified Fan status for The Eras Tour to the purchase of a canceled Lover Fest ticket or Taylor Swift merchandise (*id.* ¶¶ 438-439). Both fail.

Tying occurs when "a supplier agrees to sell a buyer a product (the tying product), but 'only on the condition that the buyer also purchases a different (or tied) product.'" *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1199 (9th Cir. 2012) (citation omitted). In other words, it is the forced imposition of a second product on a buyer who would prefer to buy the first standing alone. *Eastman Kodak Co. v. Image Tech. Servs.*, 504 U.S. 451, 464 n.9 (1992); *see also Jefferson Par. Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12 (1984) ("[A]n invalid tying arrangement" requires "the seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms."), *abrogated on other grounds by Illinois Tool Works Inc. v. Indep. Ink, Inc.*, 547 U.S. 28 (2006).

Primary-Secondary Tie. Plaintiffs' first purported tie suffers from a host of fatal defects. To start, it appears to be premised on an implausible single-brand market limited to "Taylor Swift tickets." Courts routinely reject markets limited to a single sports team, artist, or the like. *See, e.g.*, *Stubhub, Inc. v. Golden State Warriors, LLC*, 2015 WL 6755594, at *4 (N.D. Cal. Nov. 5, 2015) (dismissing antitrust claims, including tying claim, premised on market comprised of only Warriors tickets); *Redmond v. Mo. W. State Coll.*, 1988 WL 142119, at *2 (W.D. Mo. Nov. 2, 1988) ("Antitrust plaintiffs cannot...artificially define a market so as to

cover only the practice complained of."). This alone is grounds for dismissal.

Moreover, the purported tie lacks the essential element of the forced imposition of a second product. Plaintiffs do not (and cannot) allege that anyone was forced to resell their Taylor Swift primary tickets at all, let alone to use Ticketmaster's secondary ticketing services to do so. To the extent Plaintiffs are confusing a tying arrangement with a resale restriction, their claim still fails.[10] Ticket transfer restrictions are commonplace, reflecting tickets' legal status as mere licenses, not property rights. *E.g.*, *Kennedy Theater Ticket Serv. v. Ticketron*, 342 F. Supp. 922, 925 (E.D. Pa. 1972) ("Admission tickets have been uniformly defined as revocable licenses."); 30A C.J.S. Entertainment and Amusement § 88 (Dec. 2024 update) (an event ticket "typically creates nothing more than a revocable license"). Simply put, because tickets are licenses, it has long been held that "an event sponsor may impose restrictions on the transferability of tickets which it issues." *People v. Waisvisz*, 221 Ill. App. 3d 667, 671 (1991).

Verified Fan Status-Purchase Tie. Plaintiffs' second tie—pursuant to which Ticketmaster supposedly tied Verified Fan status for The Eras Tour to the purchase of canceled Lover Fest tickets or Taylor Swift merchandise—also fails. As an initial matter, what is the tying product market? It appears to be a market for "'verified' Taylor Swift fan status," which is not a coherent market at all. *See Rick-Mik Enters., Inc. v. Equilon Enters. LLC*, 532 F.3d 963, 972 (9th Cir. 2008) (affirming dismissal for failure to plead viable tying product market). Nor is "'verified' Taylor Swift fan status" a "product" for purposes of a tying claim; it is merely a condition for accessing the TaylorSwiftTix presale, which was itself only an opportunity to *potentially* purchase tickets. *See* Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* § 1750a (2024) (no tie when "one of the bundled items is an 'illusory' or

[10] To be clear, there was no restriction limiting resale of The Eras Tour tickets to Ticketmaster's secondary ticketing platform. In fact, Ticketmaster was the only secondary ticketing services provider that *did not* host resale listings for United States stops of The Eras Tour.

'phantom' product"—*e.g.*, no tie between access to professional bowling tournaments and membership in the professional bowling league because "membership had no economic value beyond entering tournaments" and was thus a "phantom product"). Finally, the purported tie directly contradicts Plaintiffs' own incorporated sources. The Verified Fan terms incorporated in the TAC provide that "*no purchase is necessary* to enter or to receive an access code." O'Mara Decl. Ex. 1 (emphasis added). Plaintiffs' tying claims fail.

3. Plaintiffs' Exclusive Dealing Claim Fails Under Twombly or for Lack of Antitrust Standing

Plaintiffs' exclusive dealing claim (TAC ¶¶ 444-452) fails to meet basic pleading standards. Plaintiffs vaguely reference "numerous multi-year, exclusive contracts with leagues, teams, [and] managers," offering no details about what these contracts might be. *Id.* ¶ 487. They claim that "artists like Taylor Swift" and "buyers" of concert tickets both "agreed to virtually exclusive dealings with Ticketmaster" (*id.* ¶ 445), but they plead zero facts about any such dealings. As for Ticketmaster's "agreements with concert venues" (*id.* ¶ 446), Plaintiffs do not allege any specific facts about these agreements or how they substantially foreclose competition. These pleading failures alone are grounds for dismissal. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Kendall v. Visa U.S.A.*, 518 F.3d 1042, 1047-48 (9th Cir. 2008).

To the extent Plaintiffs are challenging Ticketmaster's "exclusive [provision] of Primary Ticket Services *for concert venues*" (TAC ¶ 370 (emphasis added)), or its purported status as "the exclusive Secondary Ticket Exchange partner for most if not all such *venues*" (*id.* ¶ 371 (emphasis added)), Plaintiffs lack antitrust standing to bring such claims because they do not participate in any *venue-facing* market.

"Antitrust standing is distinct from Article III standing," and a plaintiff who alleges injury in fact "is not necessarily a proper party to bring a private antitrust action." *Am. Ad. Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051, 1054 n.3 (9th

Cir. 1999). To plead antitrust standing, a plaintiff must allege "antitrust injury," which requires (*inter alia*) that the plaintiff have suffered an injury "in the market where competition is allegedly being restrained." *Qualcomm*, 969 F.3d at 992. In other words, "[p]arties whose injuries, though flowing from that which makes the defendant's conduct unlawful, are experienced in *another* market do not suffer antitrust injury." *Id.* (emphasis added).

Here, if Plaintiffs are alleging an exclusive dealing claim based on Ticketmaster's provision of primary and secondary ticketing services *to venues*, Plaintiffs do not participate in those *venue-facing* services markets and therefore lack antitrust standing. *See Feitelson v. Google*, 80 F. Supp. 3d 1019, 1027-28 (N.D. Cal. 2015) (consumers in downstream retail market for cell phones alleged that they paid inflated prices due to upstream anticompetitive contracts between Google and smartphone manufacturers; consumers lacked antitrust standing because they alleged "supracompetitive pricing in Android phones, which is not the market in which the alleged anticompetitive conduct occurred"); *Bakay v. Apple Inc.*, 2024 WL 3381034, at *7 (N.D. Cal. July 11, 2024) (consumers alleged that Apple and web browser developers unlawfully agreed that developers would not release their own browser engines, which led to "supracompetitive iPhone prices"; plaintiffs lacked antitrust standing because "the site of Plaintiffs' injury [was] the smartphone market, while Apple's alleged anticompetitive conduct occur[ed] in the U.S. mobile browser market").

4. Dynamic Pricing Is Not Price Discrimination Under § 17031

Plaintiffs allege "price discrimination" under California Business & Professions Code § 17031, based on a purported "dynamic pricing scheme" pursuant to which "comparable tickets were sold at radically different prices." TAC ¶¶ 454-456. But that statute bans *locality* discrimination, defined as:

> selling or furnishing an article or product, at a lower price in one section, community or city, or any portion thereof, or in one location in such section, community, or city or any portion thereof, than in another.

Cal. Bus. & Prof. Code § 17031. This law plainly has nothing to do with dynamic online ticket pricing. *See Big Bear Lodging Ass'n v. Snow Summit, Inc.*, 182 F.3d 1096, 1104 (9th Cir. 1999) ("The statute bars price discrimination in sales to different geographic locations."); *Harris v. Capital Records Distrib.*, 64 Cal. 2d 454, 460 (1966) ("[T]o fall within its prohibition a seller must have at least two different places of business and must sell at a lower price in one than in the other."); *Cal. Wholesale Elec. Co. v. Micro Switch*, 1983 WL 1790, at *5 (C.D. Cal. Jan. 12, 1983) (dismissing § 17031 claim because "sales were all made from the same location"). Plaintiffs' claim based on this statute fails.

5. Plaintiffs Do Not Allege Any Agreement to Support Claims for Price Fixing, Group Boycotting, or Market Division

Plaintiffs' remaining antitrust claims—for price fixing (TAC ¶¶ 462-469), group boycotting (*id.* ¶¶ 470-476), and market division (*id.* ¶¶ 477-484)—are nothing more than "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678. Because Plaintiffs do no more than "couch[]" legal conclusions as factual allegations, they fail to state a claim. *Id.*

Price fixing, group boycotting, and market division each depend on the existence of an *agreement*. *See, e.g.*, *FlightBlitz, Inc. v. Tzell Travel, LLC*, 2021 WL 6618640, at *4 (C.D. Cal. Nov. 29, 2021) ("[T]he existence of an agreement...is an essential element to...price fixing claims."); *Rickards v. Canine Eye Registration Found., Inc.*, 704 F.2d 1449, 1453-54 (9th Cir. 1983) (dismissing group boycott and price-fixing claims for failure to allege agreement); *Stanislaus Food Prods. Co. v. USS-POSCO Indus.*, 782 F. Supp. 2d 1059, 1072-76 (E.D. Cal. 2011) (same for market division).

Plaintiffs do not allege facts plausibly suggesting any agreement. Start with the price fixing claim: Plaintiffs conclude that "Ticketmaster's conduct of allying with scalpers and venues such as SoFi Stadium has amounted to price fixing." TAC

¶ 463. That is nonsense—and far from sufficient to plead who agreed to what, with whom, when, and how, as is required to allege an agreement. *Kendall*, 518 F.3d at 1047-48. Plaintiffs reference price-fixing "agreements with resellers and stadium owners" and some unspecified "vertical price fixing" arrangement too (TAC ¶¶ 464-465), but they never allege "the necessary evidentiary facts to support those conclusions." *Kendall*, 518 F.3d at 1047.

The group boycotting and market division claims fare no better. Plaintiffs allege that "Ticketmaster has engaged in a group boycott with competitors like SeatGeek...to refuse to conduct business with any competitor that does not conform to Ticketmaster's demands." TAC ¶ 472. This claim is hopelessly vague: what "demands" did Ticketmaster make? What does "refus[ing] to conduct business with [a] competitor" mean? Which "competitors" were conspirators versus victims? The market division claim is even more far-fetched. According to Plaintiffs, Ticketmaster "specifically carved out small territories to give to competitors like SeatGeek in attempt to hide the level of monopolistic power and control Ticketmaster has," and then "made SeatGeek set prices...at the same high price as Ticketmaster." *Id.* ¶ 479. What "territories" have allegedly been given to SeatGeek? Why would SeatGeek—one of Ticketmaster's fiercest competitors—agree to an arrangement that gave them only "small territories"? Is SeatGeek an accomplice or a victim? Plaintiffs never say, and their dubious claims should be dismissed.

E. Plaintiffs Fail to Plausibly Allege a UCL Claim

Finally, Plaintiffs purport to allege a violation of California's UCL based on the allegations from the five preceding claims, plus a series of conclusory statements about ticket delivery and transferability and Ticketmaster's threatened tortious interference claim against StubHub. *Id.* ¶¶ 485-496. The UCL proscribes "three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent." *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012) (citation omitted). Plaintiffs do not satisfy any of the three prongs, and further fail

to allege the inadequacy of their remedies at law.

Unlawful Prong. Because Plaintiffs fail to state a claim for breach of contract, fraud, negligent misrepresentation, negligence, or antitrust violations, their UCL claim premised on the unlawful prong fails. *E.g.*, *In re DRAM Indirect Purchaser Antitrust Litig.*, 28 F.4th 42, 54 n.7 (9th Cir. 2022) (dismissing UCL claim "premised upon the existence of an antitrust conspiracy" which "[should] rise and fall with the [antitrust] claim").

Unfair Prong. Under the unfair prong, courts consider whether the alleged conduct is "tethered to any underlying constitutional, statutory or regulatory provision,...threatens an incipient violation of an antitrust law, or violates the policy or spirit of an antitrust law", or whether it has an impact on the alleged victim that "outweighs the reasons, justifications and motives of the alleged wrongdoer," including because it "is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." *Doe v. CVS Pharm., Inc.*, 982 F.3d 1204, 1214-15 (9th Cir. 2020) (simplified); *Davis v. HSBC Bank Nev. N.A.*, 691 F.3d 1152, 1170 (9th Cir. 2012). Plaintiffs fail to satisfy any of these tests. Because their underlying claims fail, Plaintiffs have not shown that Defendants' conduct threatens any violation, or "violates the policy or spirit," of any antitrust laws. *CVS Pharm.*, 982 F.3d at 121. Nor do Plaintiffs plausibly allege that "the utility of [Defendants'] conduct"—such as the fan sign-up program designed to put tickets into the hands of real fans instead of bots or professional resellers—is "outweighed by the alleged harm to consumers." *Cal. Crane Sch., Inc. v. Google LLC*, 722 F. Supp. 3d 1026, 1042 (N.D. Cal. 2024). Finally, Plaintiffs do not plausibly allege that Defendants' conduct is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. *See Nazemi v. Specialized Loan Servicing, LLC*, 637 F. Supp. 3d 856, 864 (C.D. Cal. 2022) (dismissing UCL claim where plaintiff mentioned immorality test without any analysis).

Fraudulent Prong. "[T]he fraudulent prong [of the UCL] requires a showing of fraudulent conduct pleaded with particularity under" Rule 9(b). *Cal. Crane*, 722 F. Supp. 3d at 1040. As explained above, Plaintiffs fail to plead fraud with particularity, *supra* Section IV.B., so they fail to state a claim under this prong too.

Lack of Adequate Remedy at Law. "The absence of an adequate remedy at law is a necessary prerequisite to asserting an UCL claim." *Coast Surgery Ctr. v. United Healthcare Ins. Co.*, 2024 WL 650174, at *11 (C.D. Cal. Jan. 5, 2024). In addition to the failures above, the UCL claim should be dismissed because Plaintiffs have not alleged that they lack an adequate remedy at law. *See Sonner v. Premier Nutrition Corp*., 971 F.3d 834, 844 (9th Cir. 2020).

F. Dismissal With Prejudice Is Warranted

"In deciding whether justice requires granting leave to amend," courts consider factors including "bad faith," "repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party[,] and futility of the proposed amendment." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 538 (9th Cir. 1989). Plaintiffs have now filed four successive complaints, and yet the operative pleading still fails to allege essential elements, contradicts or ignores materials incorporated by reference, and remains fundamentally nonsensical. Under these circumstances, Plaintiffs' failures are not curable, and Plaintiffs should not be permitted a *fifth* bite at the apple. The Court should dismiss the TAC with prejudice.

V. CONCLUSION

The Court should grant Defendants' Motion to Dismiss with prejudice.

[Signature on following page]

Dated: February 26, 2025

Respectfully Submitted,

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CERTIFICATE OF WORD COMPLIANCE

The undersigned, counsel of record for Defendants Live Nation Entertainment, Inc. and Ticketmaster L.L.C., certifies that this brief contains 6,926 words, which complies with the word limit of Civil Local Rule 11-6.1.

Dated: February 26, 2025

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